

¹ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21911-13.

Missouri statute provides that the MoPSC must determine whether effective competition exists for each telecommunications service of an incumbent local exchange carrier (ILEC) in each of the company's exchanges where an alternative local exchange telecommunications company has been certified.² Therefore, the MoPSC established Case No. TO-2001-467 for the purpose of reviewing the status of competition in all of Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, now Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (SBC) exchanges (first competition case). The MoPSC completed its review and issued its Report and Order on December 27, 2001 with an effective date of January 6, 2002.³ On July 30, 2004, SBC filed a motion asking the MoPSC to open a case to investigate the current state of competition in the exchanges of SBC Missouri pursuant to Section 392.245.5, RSMo 2000 (second competition case).

II. Missouri case history

In the Missouri 271 proceeding, Case No. TO-99-227, the MoPSC found alternative local exchange companies were providing service to customers in all SBC exchanges and that SBC had opened its market to competition. SBC's affiliates received authority to provide in-region, interLATA telecommunications services in Missouri on November 16, 2001.

In the first competition case, the MoPSC noted that competitors are not providing service equally throughout all of SBC's exchanges. The MoPSC stated that SBC provides basic local telecommunications in 160 exchanges in Missouri, but competition is greatest in the heavily

² 392.245.5 RSMo 2000

³The MoPSC decision was recently remanded to the MoPSC for further review on services deemed to be competitive by virtue of classification as "transitionally competitive". State of Missouri ex rel. Acting Public Counsel John Coffman vs. Public Service Commission of the State of Missouri, WD 63075, (Mo.App. W.D. 2004), filed September 28, 2004. This opinion is not final until all post hand-down motions have been disposed of and the mandate issued and received.

urbanized areas.⁴ Specifically addressing basic local service, the MoPSC found a substantial number of business customers are being provided functionally equivalent or substitutable basic local service from widely available competitive local exchange carrier (CLEC) owned facilities in the St. Louis and Kansas City exchanges.⁵ The MoPSC also found a substantial number of residential customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges.⁶ Accordingly, for these services in these exchanges, the MoPSC found effective competition exists and determined business or residential basic local service should be classified as competitive in those exchanges. In the remaining exchanges, the MoPSC found that competition from widely available CLEC-owned facilities did not exist for business or residential basic local service.

The MoPSC also reviewed the status of competition for switched (exchange) access services in SBC exchanges. It found that SBC was the dominant provider of exchange access services within its service territory. Since SBC does not pay itself exchange access rates, the MoPSC found that switched access by its very nature is a locational monopoly. As such, it determined that SBC's switched access service is not subject to effective competition.⁷

Based on its findings in the first competition case, competition in Missouri had not reached the level envisioned by Congress in the Telecommunications Act of 1996. Therefore, the MoPSC supports a more current examination into the status of competition prior to the sunset of the separate affiliate requirements of section 272.

⁴ Report and Order. *In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company*. Case No. TO-2001-467. Issued December 27, 2001. Page 13.

⁵ Id at page 23.

⁶ Id at page 33.

⁷ Id. at pages 45-47.

III. SBC audits and performance measures

Missouri has played a significant role in the SBC biennial audit process. The MoPSC has also been monitoring SBC's performance measurements. Penalty payments associated with the performance measurements began in April 2001. SBC's monthly performance measure success ratios range between 92% to 98%. Since April 2001, SBC has paid over \$4 million to CLECs and over \$1.9 million to the Missouri treasury for Tier 1 and Tier 2 damages. Over the past year, SBC has paid over \$715,000 to CLECs and \$371,000 to the Missouri treasury for Tier 1 and Tier 2 damages. These performance measures, and the resulting penalty payments are based on the Missouri 271 Agreement (M2A), which expires March 6, 2005. The separate affiliate requirements of section 272 are set to expire in November 2004, approximately 4 months prior to the expiration of the performance measurement requirements as set forth in the M2A. The MoPSC is concerned about potential discrimination beyond the sunset of section 272 and the expiration of the M2A absent a further investigation into the state of competition in Missouri.

IV. MoPSC recommendation

The MoPSC asserts that without the section 272 audit process, there is no way to detect and deter discrimination and anti-competitive behavior. Therefore, the MoPSC suggests the section 272 separate affiliate safeguards be extended for at least six months beyond the current sunset period. Extending the sunset period for six months will allow the MoPSC to complete its review of the state of competition in SBC exchanges through the second competition case, scheduled for hearing January 31 through February 4, 2005.

Respectfully submitted,

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